



40 Rector Street, 9<sup>th</sup> Floor  
New York, New York 10006

[www.StopSpying.org](http://www.StopSpying.org) | (571) 766-6273

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**SUBMISSION OF  
ALBERT FOX CAHN, ESQ.  
EXECUTIVE DIRECTOR  
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT, INC.**

**TO THE NEW YORK CITY  
CHARTER REVISION COMMISSION 2019  
CONCERNING POLICE ACCOUNTABILITY**

**SUBMITTED  
March 3, 2019**

I write on behalf of the Surveillance Technology Oversight Project (“STOP”). STOP litigates and advocates for the privacy rights of New Yorkers impacted by suspicionless, warrantless surveillance. I commend the Charter Revision Commission for bringing much-needed attention to the ongoing campaign for greater accountability of New York City Police Department (“NYPD”) misconduct.

In this submission, I propose two measures that would empower both the City Council and the Civilian Complaint Review Board to hold NYPD officers accountable for surveillance practices that unconstitutionally infringe the constitutional rights of New Yorkers. Both of the proposed charter amendments would remedy long-standing, and structural barriers to holding officers accountable and safeguarding the rights of the marginalized communities.

## I Background

For the past year, I’ve have been proud to partner with the City as part of its Automated Decision Systems Task Force, meeting with City leaders, academics, and advocates to shape recommendations for the future role of artificial intelligence in New York City Government. As part of my role in the task force, I have noted that while transparency is crucial in every area of government, it is nowhere more vital than in policing, where mistakes can quickly rob New Yorkers of their liberty, or even their life.

As part of the Charter Revision’s deliberations, I urge you to recommend the add measures to ensure accountability for discriminatory surveillance practices, especially those tools that use artificial intelligence and other automated decision systems. Historically, the NYPD deployed novel and highly invasive surveillance technologies in ways that circumvented democratic oversight and accountability. The NYPD used private and federal funds, without any disclosure to the lawmakers we depend-on to oversee our police forces. With this unaccountable funding, the NYPD was able to deploy tools like “stingrays,” fake cell towers that collect sensitive location and communications data.<sup>1</sup> Like many of the NYPD’s new tools, stingrays spy not only on the target of an investigation, but also on untold numbers of innocent bystanders.<sup>2</sup>

Civilian oversight of policing and intelligence gathering is not only a fundamental American value, it is essential for effective policing. As then-President Obama’s Task Force on 21st Century Policing found, “[l]aw enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy.”<sup>3</sup> The NYPD’s current intelligence practices are not only undemocratic, but they harm the NYPD’s very mission of promoting public safety.

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<sup>1</sup> Joseph Goldstein, *New York Police Are Using Covert Cellphone Trackers, Civil Liberties Group Says*, N.Y. TIMES, Feb. 11, 2016, <https://www.nytimes.com/2016/02/12/nyregion/new-york-police-dept-cellphone-tracking-stingrays.html>.

<sup>2</sup> *Id.*

(Cont'd on following page)

Unfortunately, the CCRB and City Council currently lack the tools to address the longstanding pattern of unconstitutional NYPD surveillance targeting Muslim New Yorkers and Communities of Color. For example, public records show that the NYPD's Intelligence Division engaged in extensive, suspicionless surveillance of majority Muslim neighborhoods and Muslim families.<sup>4</sup> Additionally, NYPD officials have conducted blanket surveillance of entire mosques, surveilling men, women, and children for nothing more than practicing their faith.<sup>5</sup> Some local businesses have even been classified as "place[s] of concern" for nothing more than having customers of middle eastern dissent.<sup>6</sup>

The facts are clear, the NYPD is engaged in widespread, discriminatory policing practices. According to the Office of the Inspector General for the NYPD ("OIG"), over 95% of recent NYPD political and religious investigations targeted Muslim individuals and organizations.<sup>7</sup> The pattern of discriminatory surveillance is completely at odds with the fact that the overwhelming majority of terrorist attacks in the United States are committed by right-wing extremists and white supremacists, according to sources as varied as the Anti-Defamation League, Southern Poverty Law Center, and U.S. General Accountability Office.<sup>8</sup>

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<sup>3</sup> PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 12 (2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>4</sup> Matt Apuzzo & Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, N.Y. TIMES, Apr. 15, 2014, [https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?\\_r=0](https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?_r=0); *see also* DIALA SHAMAS & NERMEEN ARASTU, MUSLIM AM. CIVIL LIBERTIES COAL., CREATING LAW ENFT ACCOUNTABILITY & RESPONSIBILITY & ASIAN AM. LEGAL DEF. & EDUC. FUND, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 10 (2013), <https://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

<sup>5</sup> Apuzzo & Goldstein, *supra* note 7.

<sup>6</sup> Adam Goldman & Matt Apuzzo, *NYPD: Muslim Spying Led to No Leads, Terror Cases*, ASSOCIATED PRESS, Aug. 21, 2012, <https://www.ap.org/ap-in-the-news/2012/nypd-muslim-spying-led-to-no-leads-terror-cases>.

<sup>7</sup> OFFICE OF THE INSPECTOR GEN. FOR THE N.Y. POLICE DEP'T, N.Y. CITY DEP'T OF INVESTIGATION, AN INVESTIGATION OF NYPD'S COMPLIANCE WITH RULES GOVERNING INVESTIGATIONS OF POLITICAL ACTIVITY 1 n.1 (2016), [https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig\\_intel\\_report\\_823\\_final\\_for\\_release.pdf](https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_intel_report_823_final_for_release.pdf). In its investigation, the OIG reviewed a random selection of 20% of cases closed or discontinued between 2010 and 2015 of each case type. *Id.* at 14.

<sup>8</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-17-300, COUNTERING VIOLENT EXTREMISM: ACTIONS NEEDED TO DEFINE STRATEGY AND ASSESS PROGRESS OF FEDERAL EFFORTS 4 (2017), <https://www.gao.gov/assets/690/683984.pdf>; David Neiwert, *Trump's Second Travel Ban Once Again Misidentifies Source of Domestic Terrorist Threat*, SOUTHERN POVERTY LAW CENTER (Mar. 13, 2017), <https://www.splcenter.org/hatewatch/2017/03/13/trumps-second-travel-ban-once-again-misidentifies-source-domestic-terrorist-threat>; *Murder and Extremism in the United States in 2016*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/resources/reports/murder-and-extremism-in-the-united-states-in-2016> (last visited June 13, 2017).

Currently, the City Council is evaluating long-overdue reforms to promote better accountability for police surveillance, but limitations in the existing charter prevent the council from enacting the full scope of needed reforms. One measure is the Public Oversight of Surveillance Technology (POST) Act.<sup>9</sup>

Under the POST Act, the NYPD must issue an “impact and use policy” report when choosing to use a new surveillance tool.<sup>10</sup> This report must describe the technology, rules, and guidelines for the use of that technology, and safeguards for protecting any data collected.<sup>11</sup> The City Council and the people of New York City would then be allowed to comment on such an acquisition.<sup>12</sup> The Post Act is a valuable first step, but it is a far weaker law than any of the growing number of police reforms enacted across the country.<sup>13</sup>

The reason for this limitation, as with so many police accountability measures, is curtailment. Under New York’s Municipal Home Rule Law (MHRL), the City Council must ratify any city law through a public ballot measure if it “[a]bolishes, transfers or curtails any power of an elective officer”, including the mayor.<sup>14</sup> This doctrine blocks a broad array of measures that seek to reform the conduct of city agencies, including the NYPD, but arguably curtail the powers of the mayor in the process.

For this reason, the POST Act does not prohibit the NYPD from using new surveillance tools. Unlike reform bill in other cities, which require civilian approval for new surveillance tools, the POST Act merely ensures that the council is informed as to how such tools are deployed. To be clear, the POST Act’s proposed reforms are indispensable to police accountability, but it is also clear it must just be the first step. To keep up with the broader national movement for surveillance oversight and accountability, this commission must act.

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<sup>9</sup> Intro 1482-2017

<sup>10</sup> N.Y. CITY COUNCIL 1482 § 1 (N.Y. 2017), ch. 1, 14 ADMIN. CODE OF N.Y.C. § 14-167(b) (as proposed)

<sup>11</sup> *Id.* at 14-167(a) (as proposed)

<sup>12</sup> *Id.* at 14-167(e-f) (as proposed)

<sup>13</sup> *See*, ACLU, Community Control Over Police Surveillance, available at <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance>

<sup>14</sup> MHRL section 23

## II Proposals

### a. POST Act Plus

- Implement bill paralleling the reforms implemented by Oakland, California and other progressive municipalities.
- Form civilian oversight body to review existing surveillance technologies and proposals for new technologies.
- Civilian oversight body must approve any request for the deployment of new surveillance tools.
- Civilian oversight body can remove authorization for existing surveillance tools at any time.
- Civilian oversight body can hold hearings on the impact of surveillance on New Yorkers.
- Empower CCRB and NYPD Office of the Inspector General to review and investigate surveillance complaints.
  - Provide CCRB with suitable investigative powers and independent adjudicative forum.
  - Empower CCRB to investigate bias in automated decisions tools used in police surveillance, including artificial intelligence, machine learning, and natural language processing.

### b. Curtailment repeal

- Pass stand-alone ballot measure authorizing the City Council to implement any and all regulations of the NYPD, irrespective of curtailment concerns.
- This initiative would not implement specific changes, but it would empower the council to enact any/all regulations going forward to ensure police accountability, irrespective of mayorial authority.

## III Conclusion

In light of the foregoing, I urge the commission to use its authority to propose and promote ballot measures that enhance public accountability for police surveillance. Regardless of what specific proposal is adopted, I hope that, at a minimum, the commission includes this valuable and timely discussion as part of its deliberations.